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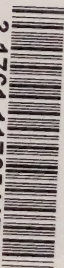
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MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES

Director of
Investigation
and Research

Competition Act

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SOME IMPORTANT QUESTIONS FOR ADVERTISERS

- Is it necessary to list important restrictions or qualifiers when advertising a bonus or other special offer?
- Are there any legal prerequisites to making performance claims about a product?
- You and your competitors usually sell a product at a particular price. Can you advertise savings off the manufacturer's suggested list price, which is significantly higher, to make the sale seem more enticing to consumers?
- If a product you offer for sale has two different prices on it, which price can you charge?
- If you advertise a product for sale at a bargain price, is it necessary to have some in stock? Is having only one of each item available sufficient?
- Did you know that, in most cases, it is against the law to sell a product or service at a price higher than that advertised?
- If you were to run a contest, would you know your obligations under the *Competition Act*?

The answers to these questions lie in the misleading advertising and deceptive marketing practices provisions of the *Competition Act*.

This folder is only a guide. It is intended to provide quick reference to the misleading advertising provisions of the Competition Act. Those requiring further assistance should refer to the full text of the Act or contact the Bureau of Competition Policy.

WHAT IS MISLEADING ADVERTISING?

Misleading advertising occurs when a representation is made to the public that is *materially* misleading. If the representation could influence a consumer to buy the product or service advertised, it is material. To determine whether an advertisement is misleading, the courts consider the "general impression" it conveys, as well as its literal meaning.

Misleading advertising can have serious economic consequences, especially when directed towards large audiences or when it takes place over a long period of time. It can cost both business competitors, who are engaging in honest promotional efforts, and consumers.

The *Competition Act* applies to all representations to the public to promote the sale of products, regardless of form. Companies and individuals can be charged. Penalties under the Act include fines, the amounts of which are at the discretion of the courts, and imprisonment for up to five years. The highest fines imposed so far under the misleading advertising provisions are \$1 million against a company and \$500,000 against an individual; the longest jail term, one year.

Advertisers are often surprised to learn that it is not a valid defence that they did not *intend* to mislead their customers. The Crown need only prove that the *effect* of the advertisement was misleading. The following "Dos and Don'ts" will help businesses comply with the Act.



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ADVERTISING "DOS AND DON'TS"

- *Do* avoid fine print disclaimers. They often fail to change the general impression conveyed by an advertisement. If you do use them, make sure the overall impression created by the ad and the disclaimer is not misleading.
- *Do* fully and clearly disclose all material information in the advertisement.
- *Do* avoid using terms or phrases in an advertisement that are not meaningful and clear to the ordinary person.
- *Do* remember that the "public" includes the "ignorant and credulous" as well as the knowledgeable and sophisticated.
- *Do* charge the lowest of two or more prices appearing on products.
- *Do* ensure that you have reasonable quantities of a product advertised at a bargain price.
- *Do*, when conducting a contest, disclose all material details required by the Act before potential participants are committed to it.
- *Do* ensure that your sales force is familiar with these "Dos and Don'ts." Advertisers may be held responsible for representations made by employees.
- *Do* use the Director's Program of Advisory Opinions. Contact any Bureau of Competition Policy office for details.

- *Don't* confuse "regular price" with "manufacturer's suggested list price," or a like term. They are often *not* the same.
- *Don't* use "regular price" in an advertisement unless it is the price at which the product is usually sold.
- *Don't* use the words "sale" or "special" in relation to the price of a product unless a significant price reduction has occurred.
- *Don't* run a "sale" for a long period or repeat it every week.
- *Don't* increase the price of a product or service to cover the cost of a "free" product or service.
- *Don't* use illustrations that are different from the product being sold.
- *Don't* make a performance claim before you can prove it, even if you think it is accurate. Testimonials usually *don't* amount to adequate proof.
- *Don't* sell a product above your advertised price.
- *Don't* unduly delay the distribution of prizes when conducting a contest.
- *Don't* forget that no one actually needs to be misled for a court to find that an advertisement is misleading.
- *Don't* forget that ignorance and/or a lack of intent are not valid defences.

WHERE YOU CAN LEARN MORE

The provisions of the *Competition Act*, which include misleading advertising and deceptive marketing practices, are enforced by the Director of Investigation and Research, Bureau of Competition Policy, part of Industry Canada.

For further information, to obtain an advisory opinion regarding proposed business or promotional plans or to inform the Bureau about any matter that may involve an offence under the misleading advertising and deceptive marketing practices provisions of the *Competition Act*, please contact the Marketing Practices Branch at one of the offices listed below. Complaints in writing are preferred.

Bureau of Competition Policy
Marketing Practices Branch
Industry Canada

50 Victoria St.

Hull, Que. K1A 0C9

Tel.: (819) 997-4282

Fax: (819) 953-2557

Or contact one of our regional offices listed below:

Atlantic Region

Halifax Insurance Building

7th Floor

Suite 700

5670 Spring Garden Rd.

Halifax, Nova Scotia

B3J 1H6

Tel.: (902) 426-6002

Fax: (902) 426-6094

Quebec Region

5 Place Ville-Marie

8th Floor, Suite 800

Montreal, Quebec

H3B 2G2

Tel.: (514) 283-7712

Fax: (514) 496-2316

Ontario Region

4900 Yonge Street
6th Floor
Willowdale, Ontario
M2N 6B8
Tel.: (416) 224-4065
Fax: (416) 224-4687

Prairie Region

260 St. Mary Avenue
Room 345
Winnipeg, Manitoba
R3C 0M6
Tel.: (204) 983-5567
Fax: (204) 983-5971

Pacific Region

1400-800 Burrard St.
Vancouver, British Columbia
V6Z 2H8
Tel.: (604) 666-8659
Fax: (604) 666-5031

Other Information

For information on provisions of the *Competition Act* other than those related to misleading advertising, contact:

Bureau of Competition Policy
Compliance and
Coordination Branch
Resource Centre
Industry Canada
Hull, Quebec
K1A 0C9

Tel.: (819) 994-0798

Fax: (819) 953-5013



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Directeur des
enquêtes et
recherches

*Loi sur la
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